

No. 14953

United States
Court of Appeals
for the Ninth Circuit

JOHN O. ENGLAND, Trustee of the Estate of
Daniel E. Sanderson, Bankrupt,
Appellant,
vs.

DANIEL E. SANDERSON, Bankrupt,
Appellee.

Transcript of Record

Appeal from the United States District Court for the Northern
District of California, Southern Division

FILED

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PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

JEFFERSON E. PEYSER,

Suite 1616 Mills Tower,
San Francisco, California,
Attorney for Bankrupt.

SHAPRO & ROTHSCHILD,

155 Montgomery Street,
San Francisco, California,
Attorneys for Trustee.

In the United States District Court for the Northern District of California, Southern Division

In Bankruptcy—No. 42844

In the Matter of DANIEL E. SANDERSON,
Bankrupt.

DEBTOR'S PETITION

To the Honorable Judge of the United States District Court for the Northern District of California:

The Petition of Daniel E. Sanderson, residing at 940 Potrero Avenue, San Francisco 10, California, City and County of San Francisco, State of California, by occupation a building contractor, respectfully represents:

1. Your petitioner has had his principal place of business at San Francisco, California, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Your petitioner owes debts and is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.

3. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible to ascertain, the names and

places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore, your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said Act.

/s/ DANIEL E. SANDERSON,
Petitioner

/s/ JEFFERSON E. PEYSER,
Attorney

State of California,
City and County of San Francisco—ss.

I, Daniel E. Sanderson, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

/s/ DANIEL E. SANDERSON,
Petitioner

Subscribed and sworn to before me this 12th day of April, 1954.

[Seal] /s/ SELMA WOLFF,
Notary Public in and for said City and County and State.

[Endorsed]: Filed April 12, 1954.

[Title of District Court and Cause.]

ORDER OF ADJUDICATION AND
REFERENCE, ETC.

At San Francisco, in said District, on the 13th day of April, 1954.

The Petition of Daniel E. Sanderson, filed on the 12th day of April, 1954, that he be adjudged a bankrupt under the Act of Congress relating to Bankruptcy, having been heard and duly considered, and no opposition being made thereto,

It Is Adjudged that the said Daniel E. Sanderson is a bankrupt under the Act of Congress relating to Bankruptcy.

It Is Ordered that the above-entitled proceeding be, and it is hereby referred to Burton J. Wyman, one of the Referees in Bankruptcy of this Court who will be in charge thereof, and to Bernard J. Abrott, Referee in Bankruptcy of this Court, in the event Burton J. Wyman shall be unable to act to take such further proceedings therein as are required and permitted by said Act, and that the said

Daniel E. Sanderson shall henceforth attend before the said Referee and submit to such orders as may be made by him or by a Judge of this Court relating to said bankruptcy.

It Is Further Ordered that all notices required to be published in the above-entitled matter, and all orders which the Court may direct to be published, be inserted in "The Recorder," a newspaper published in the County of San Francisco, State of California, within the territorial district of this Court, and in the County within which said bankrupt resides.

Dated: April 13th, 1954.

/s/ GEORGE B. HARRIS,
District Judge

[Endorsed]: Filed April 13, 1954.

[Title of District Court and Cause.]

TRUSTEE'S REPORT OF EXEMPT PROPERTY

To Hon. Burton J. Wyman, Referee in Bankruptcy:

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid as his own property, under the provisions of the Act of Congress relating to bankruptcy, as his exemptions allowed by law and claimed by him

in his schedules filed in the above entitled proceeding:

General Head—Particular Description	Estimated Value
Property claimed to be exempt by State laws, with reference to the statute creating the exemption:	
C. C. P. 690.2—Household furniture, furnishing and wearing apparel	\$ 1,500.00
C. C. P. 690.1—Chairs, tables, desks and books.....	200.00
C. C. P. 690.17—Building materials	200.00
C. C. P. 690.19—New York Life Insurance Co. Policy No. 21703765, John Hancock Mutual Life insurance Co., Policies No. 32250707 and 33575504, Independent Order of Foresters Policy No. 1138806-0.....	1,271.97
C. C. P. 690.24—1947 GMC $\frac{3}{4}$ ton truck.....	225.00
C. C. 1260—Homestead in residence and apartment building located at 940 Potrero Avenue, San Francisco, California	7,500.00
Total.....	<u>\$10,896.97</u>

Dated this 21st day of July, 1954.

/s/ JOHN O. ENGLAND,
Trustee

[Endorsed]: Filed July 22, 1954.

[Title of District Court and Cause.]

BANKRUPT'S OBJECTION TO TRUSTEE'S REPORT OF EXEMPT PROPERTY

To the Honorable Burton J. Wyman, Referee in
Bankruptcy:

The bankrupt objects to the determination of the Trustee set forth in his report of exempt property filed on the 22nd day of July, 1954, upon the ground

that the Trustee failed to set apart to the bankrupt the following described property, to wit:

1. Tools and implements of the bankrupt necessary to carry on his trade, including, but not being limited to, the following:

1-14" band saw, 1-8" table saw, 1-6" planer, 1-11/2 h.p. Duplex cut-off saw, 2 Skill saws, 6 picks, 6 shovels, 3 wrecking bars, 1 sledge hammer, miscellaneous small tools: hammer, saw, hand plane, screwdrivers, drills, bit, etc.

2. Typewriter and other mechanical contrivances and office equipment used by the bankrupt for making his living, including, but not being limited to, the following:

1 typewriter, 1 adding machine, 1 check protector and 1 recording calculator.

Said property is exempt under Section 690.4 of the Code of Civil Procedure of the State of California, and claim for such exemption was heretofore made by the bankrupt in Schedule B-5 of his Schedule of Assets and Liabilities.

The bankrupt further objects to the estimated value of Seven Thousand, Five Hundred Dollars (\$7,500) set out in said Trustee's report for the bankrupt's homestead exemption in the residence and apartment building located at 940 Potrero Avenue, San Francisco, California, and the bankrupt alleges that the value of said homestead exemption should be set at Twelve Thousand, Five Hundred Dollars (\$12,500) in accordance with the provisions of Section 1260 of the Civil Code of the State of California and in accordance with the claim for

such exemption heretofore made by bankrupt in said Schedule B-5 of his Schedule of Assets and Liabilities.

/s/ DANIEL E. SANDERSON,
Bankrupt

Duly Verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 29, 1954.

[Title of District Court and Cause.]

SUMMARY OF RECORD AND FINDINGS OF
FACT RELATIVE TO BANKRUPT'S EX-
EMPTIONS, HOMESTEAD AND OTHER-
WISE

This bankruptcy court is called upon to deal with certain exemption questions (homestead and otherwise) upon a record summarized herein as follows:

On February 26, 1954, Daniel E. Sanderson executed and acknowledged, before a notary public, in the City and County of San Francisco, State of California and, on the same date, caused to be, and there was, recorded in Book 6326, Page 556 of Official Records, in the office of the Recorder of said city and county, a certain "Declaration of Homestead" which read and reads, as follows:

"Know All Men By These Presents:

"I, Daniel E. Sanderson, do hereby declare:

"That I am the head of a family; that I am a

married man, and the name of my wife is Ona Mae Sanderson; that my family consists of my said wife;

“That I do now, at the time of making this declaration, actually reside on the land and premises hereinafter described and it is my intention to use the same as a home;

“That the premises on which I so reside are that certain lot, piece or parcel of land situate, lying and being in the City and County of San Francisco, State of California, and bounded and described as follows, to wit:

“Beginning at a point on the Westerly line of Potrero Avenue, distant thereon one hundred and ninety-five (195) feet Southerly from the Southerly line of Twenty-first Street; running thence Southerly and along said line of Potrero Avenue twenty-five (25) feet; thence at a right angle Westerly one hundred (100) feet; thence at a right angle Northerly twenty-five (25) feet; thence at a right angle Easterly one Hundred (100) feet to the point of beginning.

“Being a portion of Mission Block Number 145, together with the dwelling house and the outbuildings thereon;

“That I do, by these presents, claim the premises above described, together with the dwelling house and the outbuildings thereon, as a homestead; that all of said property is necessary to the use and enjoyment of said homestead;

“That the character of said property sought to be homesteaded is as follows:

Separate property of declarant

“That no former declaration of homestead has been made

“That the actual cash value of said premises I estimate to be \$20,000.00, Twenty thousand dollars.

“In Witness Whereof I have hereunto set my hand his 26th day of February, one thousand nine hundred and fifty-four.

“Daniel E. Sanderson”

Appended to, and as a part of said Declaration of Homestead, when said Declaration of Homestead so was recorded, was, and now is, the following affidavit:

“State of California,

“City and County of San Francisco—ss.

“Daniel E. Sanderson, being duly sworn, deposes and says:

“That he is the declarant named in and who makes the within and annexed declaration of homestead; that he has read the same and knows the contents thereof, and that the matters therein stated are true of his own knowledge.

“Daniel E. Sanderson

Subscribed and sworn to before me this 26th day of February, 1954.

[Seal]

Selma Wolff,

Notary Public in and for the City and County of San Francisco, State of California”

On April 12, 1954, Daniel E. Sanderson filed his initial petition in bankruptcy, in the above entitled court, and on the following day, April 13, 1954, was adjudged, by said court, a bankrupt.

In his schedules in bankruptcy, filed coincidentally with his initial bankruptcy petition, Daniel E. Sanderson claimed certain personal property exempt, under certain therein-specified statutes of the State of California, i.e., under section 690.2 of the California Code of Civil Procedure, "Household furniture, furnishings and wearing apparel", of the value of \$1,500.00; under section 690.4 of the same Code, "Tools of debtor necessary to carry on his trade—saws, planes, hammers, picks, shovels and miscellaneous tools", of the value of \$600.00; under sections 690.1 and 690.4 of the same Code—"Desks, chair, typewriter and other office equipment used for making debtor's living", of the value of \$600.00; under section 690.17 of the same Code—"Building materials", of the value of \$200.00; under section 690.19 of the same Code—"Life insurance benefits under certain policies having a total cash surrender value of \$1,271.97, the aggregate annual premiums of which amount to \$117.44; under section 690.24 of the same Code—"1947 GMC $\frac{3}{4}$ ton truck" of the value of \$225.00; under section 1260 of the California Civil Code, "Homestead in residence and apartment building located at 940 Potrero Avenue, San Francisco, Calif., used by debtor and his wife as a residence" as to which a homestead exemption to the extent of \$12,500.00 also was, and is, claimed.

On July 22, 1954, John O. England, as the duly

elected, qualified and acting trustee of the estate of the bankrupt, filed "Trustee's Report of Exempt Property" wherein, and whereby, the following items, claimed as exempt as aforesaid, were allowed, and set apart to the bankrupt, as exempt:

Household furniture, furnishings and wearing apparel, of the estimated value of \$1,500.00; chairs, tables, desks and books, of the estimated value of \$200.00; building materials in the sum of \$200.00; New York Life Insurance Co., Policy No. 21703765, John Hancock Mutual Life Insurance Co., Policy Nos. 32250707 and 33575504 and Independent Order of Foresters, Policy No. 1138806-0, of the aggregate estimated value of \$1,271.97; 1947 GMC $\frac{3}{4}$ ton truck, of the estimated value of \$225.00 and the "Homestead in residence and apartment building located at 940 Potrero Avenue, San Francisco, California," of the estimated value of \$7,500.00.

On July 29, 1954, there also was filed, in the above entitled bankruptcy proceeding, "Bankrupt's Objection to Trustee's Report of Exempt Property" in which the bankrupt objected to the determination as made by trustee on the grounds that the trustee failed to set apart, to the bankrupt, the following described property, (1) Tools and implements of the bankrupt necessary to carry on his trade, including, but not being limited to, 1-14" band saw; 1-8" table saw; 1-6" planer; 1-1 $\frac{1}{2}$ h.p. Duplex cut-off saw; 2 Skill saws; 6 picks; 6 shovels; 3 wrecking bars; 1 sledge hammer, miscellaneous small tools; hammer, hand plane, screwdrivers, drills, bit, etc. (2) Typewriter and other mechanical contriv-

ances and office equipment used by the bankrupt for making his living, including, but not being limited to, 1 typewriter, 1 adding machine, 1 check protector and 1 recording calculator, all of said above mentioned property (as stated in substance in said "Objection") having been claimed as exempt in the aforesaid bankruptcy schedules, under the provisions of section 690.4 of the California Code of Civil Procedure.

In said "Objection", the bankrupt further objected that the trustee should have set aside the claimed homestead exemption to the extent of \$12,500.00, in valuation, instead of to the extent only of \$7,500.00, in valuation.

The aforesaid report of the trustee and the objections thereto came on for hearing before the undersigned referee in bankruptcy on August 4, 1954, after due notice to the directly interested persons, at which said time Pierce N. Stein, Esq., representing Jefferson E. Peyser, Esq., the attorney of record of the bankrupt, appeared on behalf of the bankrupt and Daniel Aronson, Jr., Esq., representing Messrs. Shapro & Rothschild, the attorneys for the trustee, appeared on behalf of said trustee, and, after the only witness (the bankrupt) had been sworn and testified, under oath, on direct examination by his counsel and counsel, appearing on behalf of the trustee, had announced that he did not desire to cross examine the witness, the matter was submitted for decision, and the court now being advised fully in the premises finds:

1. That, for about nine (9) years prior to the

filing of the initial bankruptcy petition in the above entitled bankruptcy proceeding, the occupation of Daniel E. Sanderson, now the bankrupt herein, was that of a building contractor; that such was his occupation, at all times subsequent to, and at the time of the filing of said initial bankruptcy proceeding; that, at all times since the filing of said initial bankruptcy proceeding, said bankrupt's occupation has been that of a building contractor; that at the time of the filing of the aforesaid initial petition in bankruptcy, said bankrupt was, and that at all times since the filing of said initial petition said bankrupt has been, using all the personal property (which the trustee herein did not set apart to the bankrupt as exempt) in earning his living at his occupation of said building contractor and that all said last mentioned personal property is needed by said bankrupt in earning his living as a building contractor.

2. That the aforesaid "Declaration of Homestead" was, as aforesaid, recorded on February 26, 1954, at which time Section 1260 of the California Civil Code read that a homestead of a valuation of not to exceed \$12,500.00 could be allowed a head of a family, as was, and is the bankrupt herein.

3. That Daniel E. Sanderson commenced the above entitled bankruptcy proceeding on April 12, 1954, when, as aforesaid, he filed his initial bankruptcy petition in the above entitled court.

4. That Daniel E. Sanderson was adjudged a bankrupt on April 13, 1954.

5. That continuously, since 1898, when the bank-

ruptcy Act under which said above entitled bankruptcy proceeding was commenced, and now is being carried forward, Section 6 of said Act [11 USCA, §24] read (as it still reads and also it read on the date of the filing of the aforesaid initial bankruptcy petition): "This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the laws of the United States or by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months immediately preceding the filing of the petition, or for a longer portion of such six months than in any other State* * *"

6. That there was at least one creditor of the bankrupt who still is interested in the herein bankruptcy proceeding and who became such creditor prior to the time that the California Legislature amended (1953) changing the allowable homestead to a head of a family (as is the bankrupt herein) from \$7,500.00, in actual cash value, to \$12,500.00, in actual cash value.

Therefore, in accordance with all the facts found in the above entitled bankruptcy proceeding and particularly as found in connection with the specific matters relative to the claim of exemptions (homestead and otherwise), "Trustee's Report of Exempt Property" and "Bankrupt's Objection to Trustee's Report of Exempt Property" and also in accordance with the opinion and conclusions of the undersigned referee in bankruptcy.

Let It Be Ordered, Adjudged and Decreed.

Dated: February 10, 1955.

/s/ BURTON J. WYMAN,
Referee in Bankruptcy

There also was filed herein, on said last mentioned date, the order, judgment and decree which was, and is, as follows:

ORDER, JUDGMENT AND DECREE RELATIVE TO BANKRUPT'S CLAIMED EXEMPTIONS (HOMESTEAD AND OTHERWISE)

Whereas, this bankruptcy court this day has filed herein its summary of record, findings of fact, opinion and conclusions of law

Now, Therefore, in Accordance Therewith,

It Hereby Is Ordered, Adjudged and Decreed:

1. That, insofar as the "Trustee's Report of Exempt Property" herein contains nothing in conflict with the findings of fact, opinion and conclusions of law hereinbefore mentioned, said "Trustee's Report of Exempt Property" be, and it is, Approved and Confirmed.

2. That, insofar as said last mentioned report does contain any statement, or statements, that is in conflict with anything contained in the aforesaid findings of fact, opinion and conclusions of law, said last mentioned report be, and it is Disapproved and Unconfirmed.

3. That, in addition to the items of personal property heretofore set apart to the bankrupt, as exempt, there be, and there is, also set apart to the bankrupt, as exempt, under Section 690.4 of the California Code of Civil Procedure, supplemented by Section 6 of the Bankruptcy Act [11 USCA, §24], the following additional personal property:

1. Tools and implements of the bankrupt necessary to carry on his trade, including, but not being limited to, the following:

1-14" band saw, 1-8" table saw, 1-6" planer, 1-11½ h.p. Duplex cut-off saw, 2 Skill saws, 6 picks, 6 shovels, 3 wrecking bars, 1 sledge hammer, miscellaneous small tools; hammer, saw, hand plane, screwdrivers, drills, bit, etc.

1. Typewriter and other mechanical contrivances and office equipment used by the bankrupt for making his living, including, but not being limited to the following:

1 typewriter, 1 adding machine, 1 check protector and 1 recording calculator.

4. That the homestead claimed by the bankrupt herein be, and said homestead is, not to exceed \$12,500.00 in cash value, under the provisions of Section 1260 of the California Civil Code (as amended in 1953), supplemented by Section 6 of the Bankruptcy Act [11 USCA, §24] set apart to the bankrupt as exempt.

5. That said homestead, so set apart to the bankrupt as exempt, is particularly described as follows:

That certain lot, piece or parcel of land situate,

lying and being in the City and County of San Francisco, State of California, and bounded and described as follows, to wit:

“Beginning at a point on the Westerly line of Potrero Avenue, distant thereon one hundred and ninety-five (195) feet Southerly from the Southerly line of Twenty-first Street; running thence Southerly and along said line of Potrero Avenue twenty-five (25) feet; thence at a right angle Westerly one hundred (100) feet; thence at a right angle Northerly twenty-five (25) feet; thence at a right angle Easterly one hundred (100) feet to the point of beginning.

“Being a portion of Mission Block Number 145.”

Dated: February 10, 1955.

/s/ BURTON J. WYMAN,
Referee in Bankruptcy

On March 14, 1955, the following verified “Petition for Review” was filed herein:

“Comes now John O. England, Trustee of the above-named estate, and respectfully represents:

“That heretofore and on the 19th day of February, 1955, Hon. Burton J. Wyman, Referee in Bankruptcy, herein made and entered herein that certain ‘Summary of Record and Findings of Fact Relative to Bankrupt’s Exemptions, Homestead and Otherwise’, a full and true copy of which is hereto annexed, marked Exhibit ‘A’, specifically referred to and made a part hereof; that certain ‘Opinion

and Conclusions of Law Relative to Bankrupt's Exemptions Rights, Homestead and Otherwise,' a full and true copy of which is hereto annexed marked Exhibit 'B', specifically referred to and made a part hereof; and that certain 'Order, Judgment and Decree Relative to Bankrupt's Claimed Exemptions (Homestead and Otherwise)', a full and true copy of which is hereto annexed and marked Exhibit 'C', specifically referred to and made a part hereof; that the aforesaid Referee's Order so made and entered herein on the said 10th day of February, 1955, was and is erroneous and contrary to law in each and all of the following particulars:

"1. That neither said Referee's Order nor his said conclusions are supported by and, in fact, are contrary to the evidence adduced and to the records, papers and files herein.

"2. That the conclusion of law made by said Referee and numbered 1 is contrary to law and not supported by valid findings of fact, and/or is not supported by the records, papers and files herein in that a building contractor is not a mechanic or artisan as set forth in Section 690.4 of the Code of Civil Procedure of the State of California.

"3. That of said conclusions of law made by said Referee, that numbered 2 is contrary to law and not supported by valid findings of fact, and/or not supported by the records, papers and files herein in that at and before the time that Section 1260 of the Civil Code of the State of California was amended to increase the homestead exemption from

\$7500 to \$12,500.00, said Bankrupt had at least one creditor who was then and at the time of the filing of the original Petition herein, and who still is a creditor and therefore the homestead claimed by the Bankrupt may not exceed the sum of \$7500.00 in actual cash value.

“Wherefore, your Petitioner prays that the aforesaid Referee’s Order made and entered herein on the said 10th day of February, 1955, may be, by the Judge of the above-entitled Court reviewed and reversed; and that said Referee in Bankruptcy be, by the said Judge, directed to overrule the Bankrupt’s Objections to Trustee’s Report of Exempt Property, after due proceedings to be had herein in accordance with Section 39 (c) of the Bankruptcy Act; or for such other, further or different Order or relief as to this Honorable Court may seem just and proper in the premises.

/s/ JOHN O. ENGLAND
SHAPRO & ROTHCHILD,

/s/ By DANIEL ARONSON, JR.,
Attorneys for Trustee”

[For the sake of brevity and in order to avoid unnecessary repetition, there are four omissions herefrom in connection with the aforesaid “Petition for Review: (1) the verification attached to said petition for review; (2) the therein referred to “Exhibit ‘A’” which is a copy of said “Summary of Record”, the original of which heretofore has been inserted herein; (3) the therein referred to

“Exhibit ‘C’” which is a copy of said “Order, Judgment and Decree”, the original of which hereinbefore has been inserted herein, and (4) the therein referred to “Exhibit ‘B’” which is a copy of said “Opinion and Conclusions”, the original of which immediately follows.]

[Endorsed]: Filed February 10, 1955.

[Title of District Court and Cause.]

OPINION AND CONCLUSIONS OF LAW RELATIVE TO HEREIN BANKRUPT'S EXEMPTION RIGHTS, HOMESTEAD AND OTHERWISE

This bankruptcy court is called upon to deal herein with exemption rights (homestead and otherwise) under the following set of facts:

(a) Daniel E. Sanderson, represented in the above entitled bankruptcy proceeding by Jefferson E. Peyser, Esq., filed his initial petition to be adjudged a bankrupt, in the above entitled United States District Court for the Northern District of California, on April 12, 1954, and, on April 13, 1954, so was adjudged.

(b) In his schedules, the bankrupt claimed, as exempt, certain items of personal property, under the provisions of Section 690 (and various subsections of said last mentioned section) of the California Code of Civil Procedure.

(c) The bankrupt, in said schedule, also claimed exempt a certain homestead, to the extent of \$12,-

500.00, in valuation, under the provisions of Section 1260 of the California Civil Code, as amended, by the California Legislature in 1953.

(d) The trustee in bankruptcy herein, by "Trustee's Report of Exempt Property", set apart to the bankrupt, as exempt, all the items of personal property claimed, as exempt, by said bankrupt, as aforesaid, except certain items so claimed under Section 690.4 of the California Code of Civil Procedure.

(e) The trustee, in said exempt-property report, also set apart to the bankrupt, as exempt, the aforesaid homestead, but only to the maximum extent of \$7,500.00 in valuation, instead of to the maximum extent of \$12,500.00, in valuation, as claimed by the bankrupt.

(f) On July 29, 1954, there was filed, in the above entitled bankruptcy proceeding "Bankrupt's Objection to Trustee's Report of Exempt Property", in which the bankrupt objected to the trustee's failure to set apart, as exempt, the said items of personal property, under the provisions of Section 690.4 of the California Code of Civil Procedure, also, objected to the trustee's failure to set apart, as exempt, the aforesaid homestead to the extent of \$12,500.00, in valuation, and, in addition, made the claims that said last mentioned items in personal property and said homestead, to the extent of \$12,500.00, in valuation, should be set apart to him, as exempt.

(g) There, at least, is one of the creditors who still is interested in the herein bankruptcy proceeding who became such creditor prior to, and who

was such creditor on, the date upon which the California Legislature, by the aforesaid amendment of Section 1260 of the California Civil Code (in 1953) increased the homestead permitted to a head of a family (as is the bankrupt herein) from \$7,500.00, in valuation, to \$12,500.00, in valuation.

Consequently, as the result of the hearing heretofore held herein (at which said hearing Pierce N. Stein, Esq., representing Jefferson Peyser, Esq., the attorney of record of the bankrupt, and Daniel Aronson, Jr., Esq., representing Messrs. Shapro & Rothschild, the attorneys of record for John O. England, the trustee of the herein bankrupt estate, were present and participated in said hearing) the following two major questions are presented for consideration and determination:

1. Is the herein bankrupt legally entitled to an order, of this bankruptcy court, exempting, under Section 690.4 of the California Code of Civil Procedure supplemented by Section 6 of the Bankruptcy Act [11 USCA, §24], the items of personal property claimed exempt by said bankrupt, but not set apart to him by the trustee herein? and

2. Is the herein bankrupt legally entitled to a further order, of this bankruptcy court, exempting, under Section 1260 of the California Civil Code, supplemented by Section 6 of the Bankruptcy Act [11 USCA §24], the homestead now claimed by the bankrupt, to the extent of \$12,500.00 in valuation?

I.

Bearing in mind that exemption-statutes, being

remedial in character, generally, are to be given the most liberal construction that the facts and the applicable law involved possibly will permit¹ and such, unquestionably, should be the attitude of bankruptcy courts in construing the Bankruptcy Act wherein bankrupts' rights, under such Act are being considered²—the bankruptcy court herein concludes, as a matter of law, (and such, in the end, will be the holding herein) that the herein bankrupt is entitled, not only to have set apart to him, as exempt, the items of personal property which the herein trustee heretofore so has set apart to the bankrupt, but also, under Section 690.4 of the California Code of Civil Procedure, supplemented by Section 6 of the Bankruptcy Act [11 USCA, §24], as aforesaid, is entitled, in addition, to have set apart to him, as exempt, the other items of personal property described in, and sought by, bankrupt's schedules in bankruptcy and by "Bankrupt's Objection to Trustee's Report of Exempt Property."

¹ " * * * statutes creating the right of exemption are subject to the rule of liberal construction, and are generally subject to the most liberal construction which the courts can possibly give them." *Dean vs. Shephard* (C.C.A. 9) 26 F. (2d) 460, 461.

² "The Bankruptcy Act, 11 U.S.C.A. §1 et seq., is to be liberally construed in favor of a bankrupt". *Dixon vs. Lowe* (C.C.A. 10) 177 F. (2d) 807, 808.

See, also, *Mueller vs. Elba Oil Co.*, 21 C. (2d) 188, 197, 130 P. (2d) 961, 966.

II.

Seemingly, the most effective way to deal with the homestead-exemption question involved herein is to go back to basic law and from that starting point to follow through to what appears ultimately to be the only soundly law-fortified determination that should be arrived at in this bankruptcy proceeding.

The present federal statutes, having to do, with the subject of bankruptcies, basically came into existence in 1898 and, since 1898, although amended in certain particulars, not pertinent to a decision herein, so have remained, and now are, parts of the law of the land, as the result of the extraordinary power vested in Congress by Article 1, Section 8, of the Constitution of the United States, which said last mentioned article and section, in part, reads:

"The Congress shall have Power * * * to establish
* * * Uniform Laws * * * on the subject of Bank-
ruptcies throughout the United States * * *" and
"* * * that the power is both unlimited and supreme,
is unquestioned," said the Supreme Court of the
 United States, in *Sturges vs. Crowninshield*, 17
 U.S. (Wheat. 4) *122, *192, 14 L.Ed. 529, 548.
 [Underlining above added for emphasis.]

See, also, *West Coast Life Ins. Co. vs. Merced Irr. Dist.* (C.C.A. 9, 114 F. (2d) 654, 673 (Cert. Den., *Pacific National Bank vs. Merced Irr. Dist.* 311 U.S. 718, 61 S.Ct. 441, 85 L.Ed. 467); In re

East Contra Costa Irr. Dist. (D.C.N.D. Calif.) 10 F.Supp. 175, 178.

Commenting, judicially, on Article 1, Section 8 of the Constitution—the aforesaid extraordinary power given unto Congress to establish uniform laws on the subject of bankruptcies—it is said, In re Chicago R. I. & P. Ry. Co. (C.C.A. 7) 72 F. (2d) 443, 452, “The grant of power ‘to establish * * * uniform laws on the subject of Bankruptcies’ (Const. art. 1, §8, sub. 4) was necessarily a grant of power, the exercise of which would impair the obligation of contracts. For legislation on the subject of bankruptcy contemplates a discharge of debtor’s debts—which is an impairment of contractual obligations.”

In Hanover National Bank vs. Moyses, 186 U.S. 181, 188, 22 S. Ct. 857, 860, 46 L.Ed. 1113, 1119, is laid down the rule, “The Subject of ‘bankruptcies’ includes the power to discharge the debtor from his contracts and liabilities, as well as to distribute his property. The grant to Congress involves the power to impair the obligation of contracts, and this the States were forbidden to do.”³

See, also, Louisville Bank vs. Radford, 295 U.S. 555, 589, 55 S.Ct. 854, 863, 79 L.Ed. 1593, 1604, 1605.

As pointed out by the Supreme Court of the United States, in Continental Bank vs. Rock Island

³ Article 1, Section 10, of the Constitution declares, in part, “No State shall * * * pass any * * * Law impairing the Obligation of Contracts.”

Ry., 294 U.S. 648, 680, 55 S.Ct. 595, 608, 79 L.Ed. 1110, 1130, in affirming, *In re Chicago R. I. & P. Ry.*, supra, declared, "Speaking generally, it may be said that Congress, while without power to impair the obligation of contracts by laws acting directly and independently to that end, undeniably, has authority to pass legislation pertinent to any powers conferred by the Constitution, however it may operate collaterally or incidentally to impair or destroy the obligation of private contracts."

When, in 1898, the Bankruptcy Act was enacted there was included, in such Act, Section 6 [11 USCA, §24] which then was made to read (and so it has continued to read, to date): "This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed⁴ by the laws of the

⁴ The Supreme Court of the United States has held that the words "prescribed" and "established" often are used to express the same thing and, according to Webster, are classed as synonymous. *Ex Parte Lothrop*, 118, U.S. 113, 119, 6 S.Ct. 984, 987, 30 L.Ed. 108, 110.

"'Established by Law' * * * means 'declared by legislative enactment'." *Dane vs. Smith* (S.Ct. Ala.) 54 Ala. *47, *49.

"That which is prescribed by law means that which is prescribed by an existing law and not by a law which has ceased to exist." *People vs. Voorhis*, (Ct. of A., N.Y. 119 N.E. 106, 108.

"The words 'prescribed by law' look to actual legislation upon the subject * * *" *Exline vs. Smith*, 5 Cal. 112, 113.

See, also, *Duran vs. Pickwick Stages System*, 140 C.A. 102, 108.

United States or the States laws in force⁵ at the time of the filing of the petition in the State wherein they have had their domicile for the six months preceding the filing of the petition, or for a longer portion of such six months than in any other State * * *

Since 1879, the Constitution of the State of California has contained Article XVII, Section 1, which reads, "The legislature shall protect, by law, from forced sale a certain portion of the homestead and other property of all heads of families."

In *Tyrrell vs. Baldwin*, 78 Cal. 470, 473, 474, 21 P. 116, 117, the Supreme Court of California said, "The right of homestead and exemptions is not beyond legislative control,⁶ but is the creature of the legislature, and can be limited according to the legislative will in any respect and at any time; and the law in force at the time of the death we think controls on the subject of homesteads and the right of survivors."

⁵ The meaning of the words "in force" is explained thus in *Bouviere's Law Dict.* (Rawle's 3rd Ed.), Vol. 1, page 1254: "A law may be said to be in force when it is not repealed, or more loosely, when it can be carried into practical effect * * *"

In the same law dictionary volume, same pages, the word "force" is defined as "Restraining power; validity; binding effect".

⁶ It will be observed that, by this language, the California Supreme Court directs attention to the fact the California Constitution does not so limit the California Legislature as to make it impossible for that body to change the homestead laws for better or worse, at any time.

Acting under the aforesaid California constitutional authority thus, and thereby, given, the Legislature of California, by an amendment of Section 1260 of the Civil Code, in 1953, increased the maximum homestead-exemption valuation allowable to a head of a family,⁷ from \$7,500.00 to \$12,500.00 said section, as amended, having been made to read, as it read at the time of the filing of the initial petition in bankruptcy herein:

“Homesteads may be selected and claimed: 1. By any head of a family, of not exceeding twelve thousand and five hundred dollars (\$12,500) in actual cash value, over and above all liens and encumbrances on the property at the time of any levy of execution thereon.

.....”

“The right to a homestead exemption is a privilege given by statute,” said the Circuit Court of Appeals for the Ninth Circuit in *Coopman vs. Citizens Bank of Omak*, (C.C.A. 9) 83 F. (2d) 815, 816.

But, by what statute, or statutes, it pertinently and appropriately may be asked? In the herein bankruptcy-proceeding there appears to be only one answer: Under the California Statute, supplemented by Section 6 of the Bankruptcy Act, [11 USCA, §24] i.e., under Section 1260 of the Civil Code of California (thus supplemented) as the last mentioned California Code section read on April 12, 1954, the date upon which the initial petition for a bankruptcy adjudication was filed in the above

⁷ The bankrupt herein is the head of a family.

entitled bankruptcy-proceeding, and not as Section 1260 of the California Civil Code as it read prior to said amendment.

On July 13, 1948, this bankruptcy court, *In re Herbert J. Klumpe, Bankrupt*, No. 36898,⁸ relying on the plain language of Section 6 of the Bankruptcy Act [11 USCA, §24] and the likewise plain language of Section 1260 of the California Civil Code, held that the homestead therein claimed should be (as it was) set apart to the bankrupt to the extent of \$7,500.00, in valuation, in accordance with Section 1260 of the California Civil Code, as that section read at the time of the filing of the initial bankruptcy petition therein and as it read on July 13, 1948, although, at the time the greater part of the debts of that bankrupt was contracted by him, Section 1260 of the California Civil Code fixed the maximum allowable homestead value at \$6,000.00.

But, it seriously is contended by counsel, on behalf of the trustee in bankruptcy herein, that, regardless of whether or not, such ruling, in the Klumpe case, was correct on July 13, 1948, under the law as it then had been made manifest, such is not the recognized California law, at this time, nor has it been the law, in California, since August 20, 1948, upon which said last mentioned date it was held, *In re Rauer's Collection Co., Inc.*, 87 C.A. (2d) 248,

⁸ See opinion therein, on file in the office of the Clerk of the United States District Court for the Northern District of California, Southern Division.

196 P. (2d) 803, that the homestead-exemption is limited, in valuation, to the maximum amount allowable, under California legislative enactment, at the time a debtor contracted with a certain creditor, or certain creditors, involved in said state court proceeding. However, inasmuch as the record In re Rauer's Collection Co., Inc., supra, clearly shows that no bankruptcy proceeding, under the Bankruptcy Act, and that no question involving such Act, or any section thereof, was under consideration in the last mentioned California state-court proceeding, the decision arrived at therein presumably sound for the purpose intended, in the cause in which it was rendered) can be of no binding effect or force, so far as the herein bankrupt, or this bankruptcy proceeding is concerned,⁹ inasmuch as that decision did not deal, or purport to deal, with a factual situation of the character now confronting this bankruptcy court in the above entitled bankruptcy proceeding, i.e., a situation wherein the exemption rights (homestead and otherwise) of a bankrupt, in a bankruptcy proceeding in a federal court, and under the beneficent provisions of the Bankruptcy Act, and particularly Section 6 [11 USCA, §24] thereof, are under consideration.

As is said in *People vs. Malowitz*, 133 Cal. App.

⁹This bankruptcy court is well aware of the holding, to the contrary, In re Zarmond Goodman, Bankrupt, in the United States District Court, Southern District of California, Central Division, but sees nothing therein set forth to change the views hereinbefore and hereinafter stated.

250, 255, 256, 24 P. (2d) 117, 179 “* * * by no judicial statement, however accurate and justly applicable to the case under consideration, may later cases, perhaps dependent upon altered facts or conditions, be conclusively defined, limited or determined. In other words, no general rule announced in connection with the particular facts of a given case can furnish a safe and infallible guide for the administration of justice in any other case in which the facts, conditions, or circumstances may materially differ from those present in the case in which the rule has been declared.”

See also, *Sharon vs. Sharon*, 75 Cal. 1, 26, 16 P. 345, 356, wherein it is said, “The language of a court must always be read in view of the facts before it.”

To the same effect is *Wright vs. Nagle*, 101 U.S. (XI Otto) 791, 796, 797, 25 L.Ed. 921, 923, which reads, “The language of the court in the opinion is to be construed with reference to the question actually under consideration, and should not be extended beyond for any purpose of authority in another and different case.”

Such must be the viewpoint of this bankruptcy court, despite the fact that the decision *In re Rauer's Collection Co., Inc.*, supra, is fortified (for the purpose of that state-court proceeding) by such often-cited decisions as *Gunn vs. Barry*, 82 U.S. (XV Fall.) 610, 21 L.Ed. 212, a case that was brought up from the state-court of Georgia and dealt with the application to the facts and circumstances of that state-court proceeding (wherein no

federal bankruptcy proceeding was involved) of Section 10, Article 1, "No State shall pass any law impairing the obligation of Contracts;" in which said last-mentioned state-court proceeding no federal bankruptcy proceeding was involved; *Edwards vs. Kearney*, 96 U.S. (VI OTTO) 595, 24 L.Ed. 793, a case that arose out of a state-court proceedings originating in North Carolina, and also involving the application of Section 10, Article I, of Constitution, to a record in which no federal bankruptcy proceeding question was presented; *Bank of Minden vs. Clement*, 256 U.S. 126, 41 S.Ct. 408, 65 L.Ed. 857, a case growing out of a Louisiana state-court proceeding involving the application of Section 10, Article I, of the Constitution to the record therein, in which, also, there was no federal bankruptcy proceeding question under consideration, at any time therein, and *W. B. Worthern Co. vs. Thomas*, 292, U.S. 426, 54 S.Ct. 816, 78 L.Ed. 1344, which likewise did not involve any federal bankruptcy proceeding, but did involve the application of Article 1, Section 10, of the Constitution to the facts and circumstances shown by the record in the Arkansas state-court proceeding then under consideration by the Supreme Court of the United States.

For this bankruptcy court to hold herein that it is bound by the *Rauer* case ruling—which, in effect, declares that if there be an existing creditor of a debtor who became such prior to the amendment by the California Legislature of Section 1260 of the California Civil Code increasing the maximum

homestead valuation allowable to a debtor, a homestead to the greatest extent possible, under the amendment, cannot be allowed to such debtor (so far, at least, as the aforesaid prior creditor is concerned)—would place this bankruptcy court in a position where, under Section 6 of the Bankruptcy Act [11 USCA, §24], it could not allow any homestead to the herein bankrupt of any value whatever, inasmuch as the only way a bankruptcy court can allow to a bankrupt any exemption (homestead or otherwise) is by virtue of Section 6 of the Bankruptcy Act [11 USCA, §24] which plainly declares that the Bankruptcy Act “shall not affect the allowance to bankrupts of the exemptions which are prescribed¹⁰ by the laws of the United States or by State laws in force¹¹ at the time of the filing of the petition * * *” Under the circumstances, it inexorably follows that when the California Legislature, by its amendment of 1953, struck from Section 1260 of the California Civil Code the figures “\$7,500.” and replaced said last mentioned figures by the figures “\$12,500.” it, in effect, repealed that portion of the last mentioned section to the extent that the figures “\$7,500” were stricken and thus no longer can be considered as a part of the statute. Consequently, this bankruptcy court (if the Rauer case ruling is to be followed) would have no maximum valuation figures to be used to limit the herein bankrupt’s homestead allowance and hence there

¹⁰ Established by legislative action.

¹¹ Not repealed.

would be no "prescribed" law "in force", at the time of the filing of the petition in the above entitled bankruptcy proceeding to which this bankruptcy court could look to ascertain the maximum homestead valuation that could be allowed to the bankrupt.

It is inconceivable that any such incongruous result could have been intended by Congress when it enacted the Bankruptcy Act under the sweeping power granted it in the Constitution, and, specifically, included in such Act the carefully chosen language of Section 6 of such Act.

It is of primary importance herein to bear in mind that, as is said in *Bank of Nez Perce vs. Pindel* (C.C.A. 9) 193 F. 917, 921, "* * * the bankruptcy courts are invested with jurisdiction—such jurisdiction in law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, and among other things to 'determine all claims of bankrupts to their exemptions.' Clause 11, §2, Bk. Act."

Although this bankruptcy court if, and when, it orders set apart, to the bankrupt, any homestead-exemption, is bound to follow California law, the binding force of that rule in its application, in this bankruptcy proceeding, is that this bankruptcy court so is bound in but two particulars:

(a) To use the California law only as a yardstick for the purpose of ascertaining and determining whether, or not, the bankrupt, or any authorized person in his behalf, has pursued the required legal procedure, before bankruptcy, to select the home-

stead and to give notice to the world of such selection in order to insure to the bankrupt the basic legal right to ask the bankruptcy court in which the initial bankruptcy petition has been filed, to set apart the sought-for homestead-exemption, in that particular bankruptcy proceeding, and

(b) To use such California law only for the purpose of ascertaining and determining the maximum extent, in valuation, of such homestead-exemption, in the bankruptcy proceeding, and not in some other and, perhaps, more limited forum. In other words, "That a bankrupt's right to exemptions must be deduced from the state law is unquestionable, but it is no less true that, where the right exists, it is to be asserted in the manner which the bankruptcy act itself prescribes." *Lipman vs. Stein*, (C.C.A. 3) 134 F. 235, i.e., giving to Section 6 of the Bankruptcy Act [11 USCA, §24] the most effective interpretation, favorable to the bankrupt, made possible by the unambiguous language used by Congress when, under express constitutional grant, it included this forward-looking section in such Act.

In *Palais vs. DeJarnette* (C.C.A. 4) 145 F. (2d) 953, 955, it is said, "The controlling rule was stated with crystal clearness in *White vs. Stump*, 1924, 266 U.S. 310, 312, 45 S.Ct. 103, 69 L.Ed. 301; 'The Bankruptcy Law does not directly grant or define any exemption, but directs, in section 6 * * * that the bankrupt be allowed the exemptions "prescribed by the state law in force at the time of the filing of the petition"' in other words, it makes the state

laws existing when the petition is filed the measure of the rights of exemption." [Underlining added herein for emphasis.]

Some light is shed upon the procedure that should be followed herein by the holding *In re Richards* (D.C. Tex.) 64 F. Supp. 923, wherein an exemption question (not as regards a homestead, however, but nevertheless applying Section 6 of the Bankruptcy Act [11 USCA, §24] to the facts therein present) was before the court. The opinion therein, at page 924, states "* * * citing *Lyon vs. Matthews Co. vs. Praetorian*, Tex. Civ. App., 142 S.W. 29, *Edwards vs. Kearzey*, 96 U.S. 595, 24 L.Ed. 793, *The Queen*, D.C., 93 F. 834, 835, and other similar cases, the Trustee and creditors take the position that since the bankrupt's debt to Creditor Jones was contracted before bankrupt acquired the ring, and before the passage of the Act of 1935, the question of exemption of the ring must be decided in accordance with the law as it was at the time the debt was contracted and/or bankrupt acquired the ring. That position, however, is not meritorious. The Bankrupt Act provides that exemptions shall be allowed and must be set aside in accordance with the laws in force at the time of the filing of the petition in bankruptcy. [Underlining added for emphasis.]

There is no denying that, at least, so far as exemptions (homestead and otherwise) are concerned, an insolvent debtor who voluntarily has placed himself, or so has been placed involuntarily, behind the protecting shield afforded by the beneficent pro-

visions of the Bankruptcy Act is in a vastly more advantageous position, with regard to exemptions, (homestead and otherwise) than is a debtor (insolvent or otherwise) attempting to claim the same sorts of exemptions under any state law, unaided by the Bankruptcy Act, and this is so because the former is legally unvexed by the provisions of the Constitution of the United States prohibiting states from impairing the obligation of contracts, inasmuch as the very instant the initial petition, under the Bankruptcy Act, is filed in a federal court having jurisdiction of the bankruptcy proceeding, the obligation of the contracts involved become, and, henceforth, is impaired. Moreover, it successfully cannot be said that, although the mere filing of a bankruptcy proceeding has caused a certain degree of impairment of the contracts involved, the bankrupt, so filing cannot take further advantage by the use of any provision of law which, additionally might, could or would, impair the obligation of the originally-affected contracts, for the reason, as hereinbefore noted, not only does the Bankruptcy Act, under the Constitution of the United States, justify the impairment of the obligation of contracts, but such Act goes still further in its effect, because, by the exercise of the sweeping provisions of said Act, the obligation of contracts involved ultimately may "destroy" such obligation. *Continental Bank vs. Rock Island Ry.*, *supra*.

There is another phase of the homestead-exemption question involved herein which must be given consideration, i.e., whether, or not, in the light of

the fact that Section 6 of the Bankruptcy Act [11 USCA, §24] ever since 1898, has been a part of the law of the land, it legally, and in truth, can be said that the obligation of the contract of any creditor of the herein bankrupt suffered any impairment, or destruction, which would be brought about merely and solely, by this bankruptcy court holding that the bankrupt herein is entitled to have a homestead-exemption to the extent, in valuation, of \$12,500.00, as provided by the 1953 amendment of Section 1260 of the California Civil Code.

In dealing with this phase of the homestead-exemption question, it is to be remembered that as is said in *Northern Pacific Railway Co. vs. Wall*, 241 U.S. 87, 91, 36 S.Ct. 493, 495, 60 L.Ed. 905, 907, “* * * the laws in force at the time and place of the making of a contract, and which affect its validity, performance and enforcement, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms.”

See, also, *Von Hoffman vs. City of Quincy*, 71 U.S. (IV Wall.) 535, 550, 18 L.Ed. 403, 408, and to the same effect, *Wood vs. Lovett*, 313 U.S. 362, 370, 61 S.Ct. 983, 987, 85 L.Ed. 1404, 1407.

As is the rule, in the above mentioned regard, followed in federal courts, so is said rule followed in the courts of the State of California, it thus being stated in *Albertoni vs. Albertoni*, 104 C.A. 633, 634, 286 P. 473, 474, “All applicable laws in existence when an agreement is made necessarily enter into it and form a part of it as fully as if they

were expressly referred to and incorporated in its terms.”

In declaring that “the laws in force at the time and place of the making of a contract, and which affect the validity, performance and enforcement, enter into and form a part of it, as if they were expressly referred to, or incorporated in its terms,” the Supreme Court of the United States, in the above last-cited federal cases, not only had reference to the laws set forth in the statute books of a particular state (as, in the present instance, the laws of the State of California), but also had reference to state laws, as supplemented, both in fact and intent, by any federal statute, including, of course, the Bankruptcy Act. “It is entirely true”, declared the Supreme Court of the United States, in *Conner vs. Long*, 104 U.S. (XIV OTTO) 228, 239, 240, 26 L.Ed. 723, 727, “that the act of Congress prescribing a uniform rule as to bankruptcies, in pursuance of an express grant of power in the Constitution of the United States, is the paramount law throughout the territorial jurisdiction of the national government. It is as truly the law of each State, as it is, and because it is, a law of the United States,” and, as is said by the Circuit Court of Appeals for the Ninth Circuit, in *The Penza*, 9 F. (2d) 527, 528, “It is always assumed that statutes are passed in the light of, and with reference to pre-existing law * * *”

Inasmuch as the rule has been long-established by the highest court of the United States that “the laws in force at the time and place of the making of a

contract, and which affect its validity, performance and enforcement, enter into and form a part of it, as if they were expressly referred to, or incorporated in its terms," the bankrupt herein, now being before this bankruptcy court legally is entitled to a holding, in effect, that each contract which the bankrupt entered in to with any one of his creditors, regardless of the date up which such contract was entered into, must be read as if language, not unlike the following specifically were set forth therein:

In entering into this contract the parties hereto understand, as a matter of law, known to each of them, that, in the event that any of such parties shall become a bankrupt, in a bankruptcy proceeding filed under the Bankruptcy Act, in a United States District Court, the bankruptcy court in which such bankruptcy proceeding is pending constitutionally is empowered to, and legally can, may, and should, exercise that power, under, in accordance with, and pursuant to, Section 6 of the Bankruptcy Act [11 USCA, §24], to set apart to such bankrupt such bankrupt-claimed exemptions (homestead and otherwise) as have been enacted into law by State legislation which said state-legislation has not been repealed and which can be carried into effect under the broad provisions of such last-mentioned section of said Act, and such bankruptcy court constitutionally can, and legally may, so proceed, even though the state-exemption laws (homestead and otherwise), by virtue of which the bankruptcy court shall set apart, as exempt, property to the bankrupt, shall have been enacted into law,

by the state legislature, subsequent to the date of this contract.

In the *Legal Tender Cases*, 79 U.S. (XII Wall.) 457, 551, 20 L.Ed. 287, 312, it is declared that “* * * contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend to the defeat of legitimate government authority.”

See, also, *Norman vs. B. & O. R. Co.*, 294 U.S. 240, 305, 55 S.Ct., 407, 415, 79 L.Ed. 885, 901.

It conclusively is shown in the *Legal Tender Cases*, *supra*, at page 549, 550, 79 U.S., page 311, 20 L.Ed., how far-reaching, within constitutional limits, are statutory enactments of Congress when those enactments are brought into existence as the result of special grants of power by the Constitution of the United States. Particularly is the attitude of the Supreme Court in regard to the broad powers of Congress, backed by constitutional grants, positively made manifest by the following plain language, “Nor can it be truly asserted that Congress may not, by its action, indirectly impair the obligation of contracts, if by the expression be meant rendering contracts fruitless, or partially fruitless. Directly it may, confessedly, by passing a bankrupt act, embracing past as well as future transactions. This is obliterating contracts entirely.” Hence, if there be no contract, there is no obligation to impair!

As, plainly and to the point, stated In *re Missouri Pac. R. Co.* (D.C., Mo.) 7 F.Supp. 1, 7 (af-

firmed in *Norman vs. B. & O. R. Co.*, 294 U.S. 240, 55 S.Ct., 407, 79 L.Ed. 885), "It has long been necessary, in order at all to enforce the law, to indulge the conclusive presumption that every citizen knows the law. Actually, of course, the presumption is a fiction, but it is so necessary a fiction that it is settled."

See, also, *Boehm vs. Spreckles*, 183 Cal. 239, 248, 191 Pac. 5, 9.

Clearly, under the extensive power constitutionally granted unto Congress, to deal with the subject of bankruptcies, Congress could, as it did, give to bankrupts, under the Bankruptcy Act, greater rights than are had by debtors, not under the Bankruptcy Act, because "* * * contracts, good when made, may become bad and incapable of enforcement, by reason of the passage by Congress, acting within its constitutional limits, of subsequent prohibitions against the enforcement of such contracts." In *re Missouri R. Co.*, *supra*, page 6.

It, also, is to be remembered that not only are private parties to contracts bound by the conclusive presumption that every citizen is presumed to know the law, In *re Missouri Pac. R. Co.*, *supra*, but that it also legally is true that members of legislative bodies are bound by the same rule. So, when the California Legislature (acting within the limitations placed upon it by the Constitution of the United States, and, particularly, having before it, as its members conclusively are presumed to have had, the forward-looking language of Section 6 of the Bankruptcy Act [11 USCA, §24] and also acting

with the knowledge that "The Congress may adopt state legislation, and thus give it the sanction¹² of its own legislative power," *United States vs. O'Toole* [D.C., W. Va.] 236 F. 993, 996, [Affirmed in *U.S. vs. Gradwell*, 243, U.S. 476, 37 S.Ct. 407, 61 L.Ed. 857]) unhampered—so far as the herein bankrupt and this bankruptcy proceeding are concerned—by the provisions of the Constitution of the United States forbidding states to pass laws impairing the obligations of contracts—increased, in valuation, the allowable homestead, it unquestionably left Section 1260 of the California Civil Code in a position where, in this bankruptcy proceeding, this bankruptcy court, legally could give effect to such section as if there had been added to the wording of such last mentioned section, language not unlike the following:

In the event that, between a homestead claimant and any other person, or a corporation, there be an existing contract which was entered into prior to the effective date of the above amendment whereby the generally allowable homestead, in valuation, is increased, such homestead claimant, unless he be a person claiming a homestead, to the extent of the increased valuation, in a bankruptcy proceeding in which he is a bankrupt, shall be entitled, if otherwise qualified, to a homestead only to the extent, in

¹² It appears from the context in which it is used above that the word "sanction" so is employed as to "convey the idea of sacredness, or of authority." *People vs. Kraft* (Ct. of Appeals, N.Y.) 43 N.E. 80, 81.

valuation, that, generally, was allowable immediately prior to the time when this section was amended to read as it now stands.

Upon the record presented herein and what appears to be the pertinent law so far as this bankruptcy proceeding and the rights of the bankrupt herein, aided specifically by the Bankruptcy Act, are concerned, this bankruptcy court, remembering that, as is said in *Quong Wing vs. Kirkendall*, 223 U.S. 59, 64, 32 S.Ct. 192, 193, 56 L.Ed. 350, 352, "Laws frequently are enforced which the court recognizes as possibly or probably invalid if attacked by a different interest or in a different way", seemingly is justified, beyond dispute, in holding that Congress meant exactly what it said, no more and no less, when it incorporated into the Bankruptcy Act and, over the years, has continued to keep therein, the positive language, "This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the laws of the United States or by State laws in force at the time of the filing of the petition * * *"

In other words, this bankruptcy court, instead of following the rule laid down in a state-court proceeding wherein no bankrupt, under the federal Bankruptcy Act, or no such bankruptcy proceeding, was involved, feels impelled to, and, believes, from a legal standpoint that it must, be guided by the rule, in dealing with the provisions of the Bankruptcy Act, that "* * * every word is presumed to have meaning and purpose for Congress is not to

be thought by the courts to use language idly," *Adler vs. Northern Hotel Co.* (C.C.A. 7) 175 F. (2d) 619, 621. To do otherwise than to follow the last mentioned rule herein, seemingly would be for this bankruptcy court to blindly ignore the pointed admonition of the Supreme Court of the United States in *United States vs. Brown*, 206 U.S. 240, 244, 27 S.Ct., 620, 621, 51 L.Ed. 1046, 1047, i.e., "* * * whatever the consequences we must accept the plain meaning of plain words," for, as is said in *Thompson vs. United States*, 246 U.S. 547, 551, 38 S.Ct. 349, 351, 62 L.Ed. 876, 879, "The intention of Congress is to be sought for primarily in the language used, and where this expresses an intention reasonably intelligible and plain it must be accepted without modification by resort to construction or conjecture."

Therefore, in the light of all the facts heretofore found in the above entitled bankruptcy proceeding, the circumstances shown by the record in such bankruptcy proceeding and the existing, well-settled law applicable thereto, this bankruptcy court concludes as follows:

1. That there should be set apart to the bankrupt herein, as exempt, not only all those items of personal property hereinbefore set apart to the bankrupt, as exempt, in "Trustee's Report of Exempt Property," but, also, under the provisions of Section 690.4 of the California Code of Civil Procedure, supplemented by Section 6 of the Bankruptcy Act [11 USCA, §24], there likewise should be set

apart to the bankrupt, as exempt, all the other items of personal property heretofore claimed exempt by the bankrupt, and

2. That there also should be set apart to the bankrupt, as exempt, under the provisions of Section 1260 of the California Civil Code (as such section was amended by the California Legislature, in 1953), supplemented by Section 6 of the Bankruptcy Act [11 USCA, §24], the homestead claimed by the bankrupt, not exceeding \$12,500.00 in actual cash value.

Let It Be Ordered, Adjudged and Decreed Accordingly.

Dated: February 10, 1955.

/s/ BURTON J. WYMAN,
Referee in Bankruptcy

[Endorsed]: Filed February 10, 1955.

[Title of District Court and Cause.]

CERTIFICATE AND REPORT OF REFEREE
RELATIVE TO PETITION FOR REVIEW
OF ORDER OF REFEREE FILED IN THE
ABOVE ENTITLED MATTER Feb. 10, 1955

To Honorable Edward P. Murphy, United States
District Judge for the Northern District of
California:

I, Burton J. Wyman, one of the referees in bankruptcy of the above entitled court, and the referee

in charge of the above entitled proceeding, respectfully certify and report as follows:

On April 12, 1954, Daniel E. Sanderson filed his voluntary petition in bankruptcy in the above entitled court.

On April 13, 1954, Daniel E. Sanderson was adjudged a bankrupt.

On August 4, 1954, "Bankrupt's Objection to Trustee's Report of Exempt Property" and "Trustee's Report of Exempt Property" (both of which theretofore had been filed in the above entitled bankruptcy proceeding and both of which herewith are handed up as parts of this certificate and report) came on for hearing before the undersigned referee in bankruptcy, at which time Pierce N. Stein, Esq., representing Jefferson E. Peyser, Esq., the attorney for the bankrupt, and Daniel Aronson, Jr., Esq., representing Messrs. Shapro & Rothschild, the attorneys for the trustee in bankruptcy herein, appeared and the following occurred:

"Daniel E. Sanderson

"Called as a witness for Objecting Bankrupt, sworn.

"Mr. Stein: Your Honor, in this matter the trustee has filed a report on the exemptions and on behalf of the Bankrupt, we filed objections to that report in certain particulars. The report recognizes and reports favorably on certain exemption claims in the schedules, but omits a favorable report as to certain property, consisting of tools, implements, and so forth, which we consider necessary to the conduct of the Bankrupt's business.

"The Referee: Were they claimed in the schedules?

"Mr. Stein: And claimed in the schedules, and that is the basis of one objection.

"The other objection goes to the amount of the homestead exemption set forth in the report in the amount of \$7,500.00, claimed in the schedule in the amount of \$12,500.00.

"This latter may be moot. I will go over that when I cover the first subject of objection.

"Q. Now, Mr. Sanderson, what is your present occupation?

"A. Building contractor.

"Q. Was that your occupation—is that building contractor? "A. Building contractor.

"Q. Was that your occupation at the time you filed the Petition in Bankruptcy?

"A. That is right, sir.

"Q. How long prior to the filing of the Petition in Bankruptcy did you carry on that business?

"A. About nine years.

"Q. Constantly? "A. Constantly.

"Q. Now, in your Schedule B-5 of your Petition, you claimed as exempt tools and implements under the provisions of Sec. 690.4 of the California Code of Civil Procedure, did you not?

"A. What did you say?

"Q. You claim exempt certain tools and implements? "A. That is right.

"Q. And those tools which you claimed as exempt consisted of the following, did they not? I am going to read them off to you. They are specified

in your objections to the Trustee's report on file herein, including 1-14 inch band saw?

"A. Yes.

"Q. One 8 inch table saw? "A. Yes.

"Q. One 6 inch planer; one 11½ h.p. Duplex cut-off saw? "A. That is right.

"Q. Two Skill saws? "A. That is right.

"Q. 6 picks? "A. That is right.

"Q. 6 shovels? "A. That is right.

"Q. 3 wrecking bars, one sledge hammer and miscellaneous hand tools, consisting of hammer, saw, hand plane, screw drivers, drills, bit, etc., and other carpenter's tools?

"A. That is correct, sir.

"Q. Are all those tools and implements I just specified to you needed and used by you in carrying on your business as a building contractor?

"A. They are, sir.

"Q. In the conduct of your business as a building contractor, are there certain phases of the construction work which you do not let out to sub-contractors?

"A. Yes, there are certain phases I do not let out to subcontractors.

"Q. What work do you ordinarily not let out to sub-contractors?

"A. The carpenter labor and common laborers.

"Q. And the carpenter work and laborers' work as such, is that work performed under your direction and supervision?

"A. Direct direction and supervision.

"Q. Now, are the tools and implements which

I have specified, used in the conduct of that laboring and carpentry work?

"A. They are, sir.

"Q. Do you employ other persons to do the labor work and the carpenter work?

"A. I employ persons to do labor and carpenter work and wrecking.

"Q. Do they ordinarily furnish the tools and implements I have specified, or does the contractor?

"A. The contractor; also the machine tools you mentioned and some hand tools. Each carpenter has a kit of tools, but no power tools or any type of bar or sledge hammers do they furnish.

"Q. For example, do carpenters furnish such items as a band saw? "A. They do not.

"Q. Table saw? "A. No, sir.

"Q. Cut-off saw? "A. No, sir.

"Q. Skill saws? "A. No, sir.

"Q. Do laborers furnish such items as picks, shovels, wrecking bars? "A. No, sir.

"Q. Or the sledge hammers?

"A. No, sir.

"Q. Are those implements customarily furnished by the building contractor to the people who work for him and perform that work?

"A. They are, sir.

"Q. In carrying on your contracting business, have you furnished the tools mentioned to the men working on your jobs? "A. I have.

"Q. Are you so doing now?

"A. Doing so at the present date.

"Q. Have you yourself, personally, used any of

these tools and implements in connection with construction work?

“A. I have used all mentioned.

“The Referee: Q. Do you use them regularly?

“A. I do, sir, at various times.

“Mr. Stein: Q. Could you profitably carry on your business as a building contractor without the use of the tools and implements we have discussed?

“A. I would be very hampered in doing without them.

“Q. Do you consider you need them?

“A. I do.

“Q. Are they reasonably necessary in carrying on your business?

“A. They are; specifically so.

“Mr. Stein: In addition to the tools and implements, Your Honor, just mentioned, certain office equipment and furnishings likewise are claimed exempt and I can either go on questioning at this time about them or interrupt the examination for examination by Mr. Aronson.

“The Referee: Let's finish with your direct and then let him cross examine.

“Mr. Stein: Q. Mr. Sanderson, you also object to the Trustee's report in not exempting a typewriter, adding machine, check protector and recording calculator?

“A. That is right, sir.

“Q. Now, do you use those items of office equipment in the conduct of your business?

“A. Daily.

“Q. In your business of building contractor?

"A. I do, sir.

"Q. For what purpose are they used?

"A. Billing, getting out contracts, adding up figures, adding up estimates, calculating estimates, appraisals, billings, things of that nature.

"The Referee: Q. Do you use them yourself?

"A. I do, sir, except the typewriter. The wife uses the typewriter in making up bills and correspondence. I don't use the typewriter; I cannot. All the other equipment, I use. The check machine, calculator, adding machine I use personally. I am doing my own estimating now. I hire an estimator to come in occasionally when I have a large job so that I need assistance.

Mr. Stein: Q. Now, you also claimed exempt in Schedule B-5 desks, chairs, typewriter and other office equipment used for making your living. The Trustee, in his report, has granted as exempt chairs, tables, desks and books of the estimated value of \$200.00. Do you have as office furniture—excuse me. Let me put it this way:

"The Trustee has furnished me with a copy of an inventory of office equipment and furniture, which includes among other items the following:

"1 steel pedestal typewriter desk

1 steel table

4 leather upholstered chairs

2 file cabinets

1 light maple desk.

"Excuse me. The items prior to the maple desk he has listed as being in the front room at 940 Potrero Avenue, San Francisco. He also lists as

being in the room designated as 'Mr. Sanderson's room':

- "1 light maple desk
- 1 swivel chair
- 2 upholstered arm chairs
- 1 desk lamp
- 1 cigarette stand.

And the list further specifies as being in the room designed *a* the 'Blue Print Room' in the same premises:

- "1 steel desk
- 1 small chair
- 2 upholstered chairs
- 1 costumer
- 1 cigarette stand
- 1 drafting table with 12 drawers
- 1 drafting table stool
- 1 electric lamp
- 1 steel letter file.

"Now, did you use all those items of office furniture in the conduct of your business as a building contractor immediately prior to the time you filed the Petition in Bankruptcy?

"A. Did I use them?

"Q. Yes. "A. Yes.

"Q. Now, do you consider that you needed——

"A. I do consider.

"Q. All those items of furniture in the conduct of your business? "A. I do, sir.

"Q. How do you consider all those items of office furniture necessary in the conduct of your business?

"A. Well, I use them daily or every other day. For instance in my office: In my office, I consult them in my office directly. Then, when I am estimating by myself in the small room adjacent to my office where I have my blue print room, I have blue prints stored; the desk and calculating machine and adding machine are in that particular room. It is a private room and a telephone and desk are in there.

"Q. Let me interrupt. Let's take each room and the furniture therein.

"Mr. Aronson: Let me interrupt. It might shorten this case. The Trustee will stipulate that all items on the list are used by Mr. Sanderson in his business as a general contractor.

"Mr. Stein: Will you stipulate they are necessary?

"Mr. Aronson: I will stipulate they are used.

"Mr. Stein: I want to establish necessity, so I can bring it within the exemption statute. Will you stipulate they may be exempt to him? That is the purpose of the inquiry.

"Mr. Aronson: That they are exempt?

"Mr. Stein: Should be exempt.

"Mr. Aronson: That is not the Trustee's report.

"Mr. Stein: Q. Let's take the Blue Print Room, Mr. Sanderson. There is a steel desk, a small chair, two upholstered chairs among other items listed there. Do you consider those items necessary in the conduct of your business? "A. I do, sir.

"Q. Why?

"A. Because they are part of my private office.

I can go in and close the door if I need to and consult on these jobs.

“Q. Speaking of the Blue Print Room?

“A. Speaking of the Blue Print Room. The estimating room, I would term it; away from everybody and noise. I need to do it that way.

“Q. Who would make use of the desk and chair in that room?

“A. I would make use of the desk and chair in that room.

“Q. Does anybody else use them?

“A. Yes, occasionally I would have an estimator come in, when a job is large. He would use the facilities I use in this same room.

“Q. About the drafting table and drafting stool?

“A. They would be used constantly in estimating.

“The Referee: Q. By whom?

“A. By myself.

“Mr. Stein: Q. The electric lamp and letter file would be used, necessary for use?

“A. The letter file is for filing contracts and correspondence of daily and job records.

“Q. Now, there is another break down here, furniture in Mr. Sanderson's room. That room lists: Desk, arm chair, swivel chair, two arm chairs, desk lamp and cigarette stand. Now, in what way is this furniture needed by you in the conduct of your business?

“A. To consult clients, take them in my office and figure their jobs.

“Q. Now in the front room are items listed,

including the typewriter desk, steel table, four leather upholstered chairs, 2 file cabinets. Where are those items needed in the conduct of your business?

“A. I have a girl there most of the time. She has a phone and takes down orders. My wife comes in evenings and does typing for me, uses the typewriter there and the phone and desk at that particular place.

“Mr. Stein: I have no further questions, Your Honor.

“The Referee: Cross examine?

“Mr. Aronson: I have no questions.

“The Referee: No questions?

“Mr. Aronson: No.

“Mr. Stein: I would like to point out, Your Honor, that the \$200.00 statutory exemption under Sec. 690.1 has been passed on favorably by the Trustee, but the items of furniture we have discussed include all items of furniture therein and, apparently, would exceed in value the \$200.00 exemption included under that section, and we take the position that those items of furniture are exempt under Sec. 690.4 as being necessary to the conduct of his business. Therefore, we ask that all items of furniture be exempt under both sections, rather than just \$200.00 under Section 690.1. I believe the authorities will support that position.

“The Referee: You said something about the homestead matter being moot.

“Mr. Stein: The homestead point is this, Your Honor——

“The Referee: Didn’t you say it was moot?

“Mr. Stein: I said it might be moot.

“The Referee: If it is moot, I don’t want to go into it.

“Mr. Stein: Here is the situation on the homestead; there may be a way of having it determined so we will know whether it is going to be moot or not: But, there is indebtedness in the sum of \$8,700.00 against the homestead property, represented by a mortgage indebtedness. If the homestead exemption were limited to \$7,500.00, the market value of the property might conceivably leave a balance available to the estate depending upon what the market valuation would be; on the other hand, it might not. In other words, the market valuation might be less than \$16,000.00, in which case it would be immaterial whether a \$7,500.00 or \$12,500.00 exemption were set apart here, because there would not be anything left for the estate in either event. Now, that matter becomes material only if there would be something left over and above the amount of indebtedness and \$7,500.00 exemption, in which event, the Bankrupt takes the position that the \$12,500.00 exemption should be granted to him. Now, with \$12,500.00 exemption granted, it is pretty clear there could not possibly be an equity over and above that. The property, apparently, is of a value of between \$13,000.00 and maybe up to \$20,000.00; we don’t know.

“It would be my suggestion, if it can be done, that the property be appraised first to determine whether or not there would be an equity above the

\$7,500.00 exemption. If there is not, the question would be moot.

"The Referee: Do you want to pay for the appraisal?

"Mr. Stein: Well, the Bankrupt is not in position to pay for the appraisal, no, sir. I am prepared to urge the point now as a matter of law.

"The Referee: What have you to say on the law point?

"Mr. Aronson: On the homestead, it is the Trustee's position, Your Honor, that the \$20,000.00 valuation is set forth in the schedule. Also, on behalf of the creditors, it would appear that the question of whether he is entitled to \$7,500.00 or \$12,500.00 is very material to the creditors.

"The Referee: In other words, you want it ruled on?

"Mr. Aronson: I would like a ruling on it.

"Mr. Stein: I am prepared to argue the matter.

"The Referee: I have already ruled on it when it was raised before. I don't think argument would change my ruling.

"Mr. Stein: I am not aware of the previous ruling. Of course, the facts here are that the Declaration was recorded in February of this year when the law was \$12,500.00 and the increase in the exemption was, by statute, effective September, 1953. In this particular estate, I am informed that the amount of creditors incurred prior to September, 1953 is very small.

"The Referee: I would not care if they were all incurred after that statute, under my ruling.

“Mr. Aronson: If I may interrupt: I don’t want to state your case or speak for the Court, but I think, in so far as we know, there has been only one case, Moore vs. Bay that has ever discussed the point involved as to the mortgage question.

“The Referee: I have that in mind too. Also, I have in mine the way the Bankruptcy Act reads.

“Mr. Aronson: That is the basis of the Trustee’s position.

“The Referee: It says the law that is in force at the time of the filing of the Petition in Bankruptcy.

“Mr. Stein: That is the \$12,500.00 exemption. That is the position we urge.

“The Referee: The only objection I have ever heard, and you cannot do it, is because it impairs the obligation of the contract. But, the filing of the bankruptcy itself did that, so, there cannot be any obligation that is being impaired, and the people, when they contracted with the bankrupt to give him credit, are presumed to know the law and the law has been in effect many many years so far as bankruptcy is concerned.

“Mr. Aronson: The people who extended credit prior to the time the statute was amended to raise the exemption and also as to the time the homestead was put on, extended credit on the basis that the maximum would be \$7,500.00.

“The Referee: No, they did not. They extended credit on the basis of the Bankruptcy law, knowing there was such a thing as the Bankruptcy law, and the Bankruptcy law says the law that is in force

and effect at the time of the filing of the Petition, and \$12,500.00 was in force and effect, and that is Sec. 6 of the Bankruptcy Act. It has been in there, I think, ever since 1898, and they are presumed to know the law. Do you want to brief it?

"Mr. Stein: Yes, sir.

"Mr. Aronson: Is this as to the whole?

"The Referee: As to the whole.

"Mr. Aronson: I would like to make known the Trustee's position in so far as the tools are concerned and any items on the Trustee's inventory, desks, typewriter, so on, *except* to the extent of \$200.00. It is the Trustee's contention that as a general contractor, Mr. Sanderson does not fall within the Artisan's provisions of Sec. 690.4; thus, he would be limited to the \$200.00 of chairs, books, and tables. As to the other items, including the hand tools as well as other items, for which, incidentally, the inventory the Trustee has made, which has not been filed, shows a value of \$1156.00 according to the inventory, it is our position, being a general contractor, which has been his testimony throughout the proceedings, he is not entitled to them.

"We also urge upon your Honor and call to your attention Raulers Collection Agency, 87 Cal. Ap. 248 on the question of the homestead."

The matter having been submitted, without the filing of any briefs on behalf of either of the interested parties, the undersigned referee in bankruptcy, on February 10, 1955, filed herein the summary of record and findings of fact, the document pertaining thereto reading as follows:

Papers Handed Up Herewith

The following papers are handed up herewith as parts of this Certificate and Report:

1. "Declaration of Homestead".
2. "Trustee's Report of Exempt Property".
3. "Bankrupt's Objection to Trustee's Report of Exempt Property".
4. Reporter's Transcript of Hearing on August 4, 1954.
5. "Petition for Review".

Dated: June 16th, 1955.

Respectfully submitted,

/s/ BURTON J. WYMAN,
Referee in Bankruptcy

[Endorsed]: Filed June 16, 1955.

[Title of District Court and Cause.]

PETITION FOR REVIEW

Comes now John O. England, Trustee of the above-named estate, and respectfully represents:

That heretofore and on the 19th day of February, 1955, Hon. Burton J. Wyman, Referee in Bankruptcy, herein made and entered herein that certain "Summary of Record and Findings of Fact Relative to Bankrupt's Exemptions, Homestead and Otherwise", a full and true copy of which is hereto annexed, marked Exhibit "A", specifically referred

to and made a part hereof; that certain "Opinion and Conclusions of Law Relative to Bankrupt's Exemptions Rights, Homestead and Otherwise," a full and true copy of which is hereto annexed marked Exhibit "B", specifically referred to and made a part hereof; and that certain "Order, Judgment and Decree Relative to Bankrupt's Claimed Exemptions (Homestead and Otherwise)", a full and true copy of which is hereto annexed marked Exhibit "C", specifically referred to and made a part hereof; that the aforesaid Referee's Order so made and entered herein on the said 10th day of February, 1955, was and is erroneous and contrary to law in each and all of the following particulars:

1. That neither said Referee's Order nor his said conclusions are supported by and, in fact, are contrary to the evidence adduced and to the records, papers and files herein.

2. That the conclusion of law made by said Referee and numbered 1 is contrary to law and not supported by valid findings of fact, and/or is not supported by the records, papers and files herein in that a building contractor is not a mechanic or artisan as set forth in Section 690.4 of the Code of Civil Procedure of the State of California.

3. That of said conclusions of law made by said Referee, that numbered 2 is contrary to law and not supported by valid findings of fact, and/or not supported by the records, papers and files herein in that at and before the time that Section 1260 of the Civil Code of the State of California was

amended to increase the homestead exemption from \$7500 to \$12,500.00, said Bankrupt had at least one creditor who was then and at the time of the filing of the original Petition herein, and who still is a creditor and therefore the homestead claimed by the Bankrupt may not exceed the sum of \$7500.00 in actual cash value.

Wherefore, your Petitioner prays that the aforesaid Referee's Order made and entered herein on the said 10th day of February, 1955, may be, by the Judge of the above-entitled Court reviewed and reversed; and that said Referee in Bankruptcy be, by the said Judge, directed to overrule the Bankrupt's Objections to Trustee's Report of Exempt Property, after due proceedings to be had herein in accordance with Section 39 (c) of the Bankruptcy Act; or for such other, further or different Order or relief as to this Honorable Court may seem just and proper in the premises.

/s/ JOHN O. ENGLAND,
Trustee

SHAPRO & ROTHSCHILD
/s/ By DANIEL ARONSON, JR.,
Attorneys for Trustee

Duly Verified.

[Endorsed]: Filed March 14, 1955.

In the United States District Court for the Northern District of California, Southern Division

No. 42844 (In Bankruptcy)

In the Matter of DANIEL E. SANDERSON,
Bankrupt.

ORDER

This is a petition for review of a referee's order sustaining objections to the trustee's report of exempt property. By his order, the referee set aside to the bankrupt three items of property which are here challenged. They raise different questions and are separately discussed.

The first item is a homestead exemption allowance in the amount of \$12,500. There is no question about the proper declaration of the homestead. The issue between the trustee and bankrupt arises out of the fact that the homestead exemption allowance provided by California before September 1, 1953 was in the amount of \$7,500, which amount was raised on that date to \$12,500. California Civ. Code, §1260. Some of the bankrupt's creditors became such before September 1, 1953, however, and under the law of California, these creditors are restricted only by the amount of the homestead allowance in force at the time of the contraction of the debt, *In re Rauer's Collection*, 87 C. A. 2d 248 (1948), or \$7,500. From this, the trustee argues that by virtue of the provisions of Section 70 (c) of the Bankruptcy Act (11 USC §110), he is entitled to proceed in the shoes

of any creditor, and may therefore be limited only by the lesser exemption, or \$7,500.

Section 6 of the Bankruptcy Act, so far as pertinent provides:

“This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force at the time of the filing of the petition * * *.” (11 USC §24).

To allow the trustee here, who is acting for the general creditors who became such after September 1, 1953, as well as for those who became creditors earlier, to set aside the exemption of \$12,500, would manifestly deny to the bankrupt the exemption which the laws of California have given him against all but a specific group of creditors. Section 6 of the Act was intended to control the entire Act, including Section 70(c).

It is the conclusion of the Court, therefore, that the homestead exemption allowance of \$12,500 was proper, and the order of the referee is affirmed in that respect.

The remedy of those creditors whose rights under California law extend beyond the \$12,500 exemption is in the State Courts. Accord, *In re Buckley*, 24 F. Supp. 832 (W. D. La. 1938) (title to property exempt under state law does not pass to trustee, although creditors held valid waiver of exemption) and cases cited therein, at 835.

The constitutional issues raised by the briefs are not necessary to the decision of this case, and are not discussed.

The remaining items of challenged property were set aside to the bankrupt by the referee under the provisions of California Code of Civ. Proc., §690.4. The first of these items is classified as tools and implements of the bankrupt, coming within the first sentence of Section 690.4, which reads as follows:

“The tools or implements of a mechanic or artisan, necessary to carry on his trade;”

The property concerned, so far as set forth in the referee's order is: “1-14” band saw, 1-8” table saw, 1-6” planer, 1-11½ h.p. Duplex cut-off saw, 2 Skill saws, 6 picks, 6 shovels, 3 wrecking bars, 1 sledge hammer, miscellaneous small tools; hammer, saw, hand plane, screwdrivers, drills, bit, etc.” The trustee objects on the grounds that the bankrupt is not within the statutory definition of “mechanic or artisan” and that they are not “necessary to carry on his trade”. The referee made contrary findings on both points, after a hearing. The transcript of the hearing, which is a part of the record herein, reveals that the bankrupt testified that he was a building contractor, but that he also used every one of the named items personally, and hired others to use them under his immediate supervision, on those parts of a building contract which he did not contract out to other persons. He testified that he used these tools regularly, “at various times.” He further testified that he did not let out to other subcontractors the carpentry work and the common laborers' work, such as wrecking, which work he

supervised immediately, and for which he provided some of the tools named. It is a reasonable inference from the testimony of the bankrupt that he himself participated in the carpentry and wrecking work, together with others whom he hired for that work. Evidently, it is with this testimony in mind that the referee acted in treating the bankrupt as a "mechanic or artisan". It is instructive to note that in a previous federal case applying the same provision, the court allowed an exemption of a baker's implements, although the baker employed others to use the implements. *In re Petersen*, 95 F. 417 (D. C. 1899). The court there pointed out that "it must be understood that a baker would not be entitled to utensils and implements in number sufficient to carry on an extensive business, in the prosecution of which his own labor would be relatively a small factor, and of little value, when compared with the capital invested or the labor of others employed therein."

The court went on to say that the question of what tools and implements were necessary in a given case was a matter of fact, to be decided on common sense principles as each case arose. It has been said by California courts that their exemption statutes are to be liberally construed in case of doubt. See, *Security First National Bank of Los Angeles vs. Pierson*, 2 C. 2d 63, 38 P. 2d 784 (1938). The courts of California have exempted, under Section 690.4, the safe of a jeweler and watchmaker, *In re McManus*, 87 Cal. 293 (1890) and the instruments of a sexton, *Peebler vs. Danziger*, 104 C. A.

2d 490 (1951). There is sufficient basis in the instant record for the referee's conclusion in the case at bar that the described tools were necessary for the carrying on of the bankrupt's trade, and his order is affirmed in that respect as well.

The third item of property is office furniture of the bankrupt, used by him in his capacity as building contractor, including, as set forth in the referee's order, the following:

"1 typewriter, 1 adding machine, 1 check protector, and 1 recording calculator".

These items are not claimed by the bankrupt as tools of an artisan. They are plainly the office equipment of a businessman. Justification for exemption of these items, in excess of the amount of \$200 provided by Cal. C. C. P. §690.1, must be found in the remaining portion of Section 690.4. The remainder of that section sets forth with great particularity what items of their equipment may be retained by a great variety of persons in various occupation but makes no allowance for office furnishings in general for businessmen others than those specifically named. The single general clause relating to "typewriters or other mechanical contrivances employed for writing in type, actually used by the owner thereof for making his living" follows immediately upon the phrase "* * * also the typewriter of a stenographer, the typewriter of a newspaper reporter and the * * *." It would seem to have been intended, therefore, to apply to writing contrivances which were the principal equip-

ment of persons whose livelihood was made primarily from the use of such contrivances, and not to business persons who made use of typewriters as part of their general office equipment. It may be relevant to note here that the bankrupt testified that he did not himself know how to use the typewriter. In the absence of California decisions to the contrary, the detailed language of Section 690.4 compels the conclusion that no general exemption for office equipment was intended by the legislators, and that the referee was in error with respect to the above named items of office furniture. With the exception of the last item of property mentioned, the referee's order is sustained.

Dated: October 5, 1955.

/s/ EDWARD P. MURPHY,

United States District Judge

[Endorsed]: Filed October 6, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that John O. England, as Trustee of the estate of the above-named bankrupt, hereby appeals to the United States Court of Appeals for the Ninth Circuit from that portion of that certain order of the above-entitled court made and entered herein on the 5th day of October, 1955,

by Hon. Edward P. Murphy, Judge of the above-entitled court, which sustained that portion of the order of Hon. Burton J. Wyman, Referee in Bankruptcy herein, dated February 10, 1955, whereby the bankrupt's exceptions to the Trustee's Report of Exempt Property herein were sustained, and there was allowed to the above-named bankrupt as exempt the real property in said bankrupt's Declaration of Homestead.

Dated at San Francisco, in said District, this 24th day of October, 1955.

SHAPRO & ROTHCHILD,

/s/ By DANIEL ARONSON, JR.,

Attorneys for Appellant, John O. England, as Trustee of the estate of the bankrupt, above-named

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 24, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents listed below, are the originals filed in this court in the above-entitled case and that they constitute the Record on Appeal herein as designated by the attorneys for the Appellant and Appellee:

Debtors Petition and Schedules A and B, Summary and Statement of Affairs.

Order of Adjudication.

Trustee's Report of Exempt Property.

Bankrupt's Objection to Trustee's Report of Exempt Property.

Certificate and Report of Referee to Petition for Review of Order of Referee.

Trustee's opening Brief in Support of Petition for Review.

Bankrupt's Reply in Opposition to Trustee's Petition of Review.

Petition for Review.

Trustee's Closing Brief in Support of Petition. Order.

Transcript, Objections to Trustee's Report of Exempt Property.

Declaration of Homestead.

Notice of Appeal—Trustee.

Designation of Contents of Record on Appeal—
Trustee.

Notice of Appeal—Bankrupt.

Designation of Additional Portion of Record on
Appeal—Bankrupt.

In witness whereof, I have hereunto set my hand
and affixed the seal of said District Court this 15th
day of November, 1955.

[Seal] C. W. CALBREATH,
Clerk

/s/ By WM. J. FLINN,
Deputy Clerk

[Endorsed]: No. 14953. United States Court of
Appeals for the Ninth Circuit. John O. England,
Trustee of the Estate of Daniel E. Sanderson,
bankrupt, Appellant, vs. Daniel E. Sanderson,
Bankrupt, Appellee. Transcript of Record. Appeal
from the United States District Court for the
Northern District of California, Southern Division.

Filed: November 23, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14953

JOHN O. ENGLAND, Appellant,

vs.

DANIEL E. SANDERSON, Appellee.

APPELLANT'S STATEMENT OF POINTS

Comes now John O. England, Appellant herein, and in accordance with Rule 17(6) of the Rules and Practice of the United States Court of Appeals for the Ninth Circuit specifies the following as a concise statement of the points on which he intends to rely on this appeal from the Order made and entered by the Hon. Edward P. Murphy, Judge of the United States District Court for the Northern District of California, on October 5, 1955, and more particularly specified and described in Notice of Appeal heretofore filed with the Clerk of said District Court on October 24, 1955, as follows:

I.

That the District Court in said Order of October 5, 1955, erred in sustaining the Order of the Referee in Bankruptcy dated February 10, 1955, insofar as said Order allowed the bankrupt a homestead exemption of the value of \$12,500.00.

II.

That the District Court in said Order of October

5, 1955, erred in finding that Section 6 of the Bankruptcy Act prevents the Trustee from denying a homestead exemption in excess of \$7,500.00.

III.

That the District Court in said Order of October 5, 1955, erred in finding that the remedy of those creditors whose rights under California law extend beyond the \$12,500.00 exemption is in the state court.

Dated: December 1, 1955.

Respectfully submitted,

SHAPRO & ROTHSCHILD,

/s/ By DANIEL ARONSON, JR.,

Attorneys for Appellant, John O. England, as Trustee of the estate of Daniel E. Sanderson, Bankrupt.

Acknowledgment of Service attached.

[Endorsed]: Filed December 6, 1955. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the parties hereto through their respective counsels of record that the Debtor's Petition and Schedules A and B filed with the United States District Court for the Northern District of California on April

12, 1954, may be considered by the above-entitled court in their original form without the necessity of being printed.

Dated: December 1, 1955.

SHAPRO & ROTHSCHILD,

/s/ By DANIEL ARONSON, JR.,

Attorneys for John O. England,
Appellant

JEFFERSON E. PEYSER,

/s/ By PEIRCE N. STEIN,

Attorneys for Daniel E. Sanderson,
Appellee

Acknowledgment of Service attached.

[Endorsed]: Filed December 6, 1955. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the parties here to through their respective counsels of record that the Order of Adjudication made in the above-entitled matter on the 13th day of April, 1954 and the Order approving Trustee's bond in the bankruptcy proceedings of the United States District Court for the Northern District of California may be considered by the above-entitled court in

their original form without the necessity of being printed.

Dated: December 7, 1955.

SHAPRO & ROTHSCHILD,

/s/ By DANIEL ARONSON, JR.,

Attorneys for John O. England,
Appellant

JEFFERSON E. PEYSER,

/s/ By PEIRCE N. STEIN,

Attorneys for Daniel E. Sanderson,
Appellee

Acknowledgment of Service attached.

[Endorsed]: Filed November 8, 1955. Paul P. O'Brien, Clerk.